

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

UNITED STATES OF AMERICA)	
)	Criminal Action No. 7:15-cr-00082
v.)	
)	By: Elizabeth K. Dillon
BENJAMIN MOORE GARNETTE)	United States District Judge

MEMORANDUM OPINION AND ORDER

Before the court is Benjamin Moore Garnette's motion requesting a recommendation to the Bureau of Prisons (BOP) that he be placed in a halfway house or residential reentry center (RRC) for a period of twelve months. For the reasons stated below, this motion will be denied.

I. BACKGROUND

In 2016, Garnette pled guilty to possession with the intent to distribute heroin and possession of a firearm in furtherance of a drug trafficking crime. He was sentenced to 77 months on the distribution count and 60 months on the firearm count, to be served consecutively. (Dkt. No. 95.) The sentence was later reduced to 80 months based on substantial assistance. (Dkt. No. 186.)

In his motion, Garnette states that he is 34 years old with a projected release date in November 2021. (Dkt. No. 187.) It appears Garnette took the court's advice to educate and better himself seriously. He states that he is "making every effort to better himself" while incarcerated. (*Id.* at 2.) He completed a course in anger management and participated in drug education in 2016. In 2017, he completed a fitness course and a parenting course. Then in 2018, he completed a small business course and obtained his GED. (*Id.*) Garnette acknowledges that he has made mistakes in the past but notes that he is a single parent of four children, and twelve months in a halfway house will help to prepare him for reentering society. (*Id.* at 3–4.)

II. ANALYSIS

District courts lack authority to order home confinement or placement in an RRC or halfway house because the authority to make placement decisions is vested with the BOP. *See* 18 U.S.C. §§ 3624(c)(2), 3621(b). Garnette acknowledges this lack of authority and requests a recommendation for RRC or halfway house placement, not an order. Federal district courts have differed on whether a district court “can make imprisonment placement recommendations on a Defendant’s post-sentencing motion.” *United States v. Smith*, Case No. 6:15-cr-00006-001, 2019 WL 4016211, at *3 (W.D. Va. Aug. 26, 2019) (collecting cases); *see also United States v. Kenney*, Criminal Action No. 1:17-00195-004, 2020 WL 261237, at *1–2 (S.D. W. Va. Jan. 16, 2020) (stating that a “solid majority of federal district courts throughout the country, including courts in this circuit, have concluded that a sentencing court may make imprisonment placement recommendations on a defendant’s post-sentencing motion,” and recommending 9–12 months placement in an RRC).

To the extent the court has the authority to recommend RRC or halfway house placement, the court declines to exercise that authority. Garnette’s efforts to better himself by taking classes and obtaining his GED are commendable. However, under the circumstances of this case, the court finds that the BOP is in a better position than the court to evaluate Garnette’s placement alternatives. *See Smith*, 2019 WL 4016211, at *3 (“[T]he court finds in this case that the BOP is in a superior position to evaluate Defendant’s assertions and to determine the extent, if any, to which she should serve all or part of the end of her sentence in an RRC, or on home confinement.”). The court is certain that the BOP will give serious and thoughtful consideration to Garnette’s placement request and stresses that the court’s decision not to make the requested

recommendation does not reflect negatively on Garnette's eligibility for placement at an RRC or halfway house or on the conditions for such placement.

III. CONCLUSION

Based on the foregoing, it is hereby ORDERED that Garnette's motion for a recommendation for placement in a halfway house or residential reentry center (Dkt. No. 187) is DENIED.

Entered: June 15, 2020.

/s/ Elizabeth K. Dillon
Elizabeth K. Dillon
United States District Judge